

# Senate File 2373 - Introduced

SENATE FILE 2373

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SSB 3226)

## A BILL FOR

1 An Act relating to the administration of the replacement tax  
2 for new cogeneration facilities, and including effective  
3 date and retroactive applicability provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 437A.3, subsection 1, Code Supplement  
2 2009, is amended by adding the following new unnumbered  
3 paragraph:

4 NEW UNNUMBERED PARAGRAPH. For new cogeneration facilities,  
5 the assessed value shall be determined as provided in section  
6 437A.16A.

7 Sec. 2. Section 437A.3, subsection 4, Code Supplement 2009,  
8 is amended to read as follows:

9 4. a. "Cogeneration facility" means a facility with a  
10 capacity of two hundred megawatts or less that uses the same  
11 energy source for the sequential generation of electrical or  
12 mechanical power in combination with steam, heat, or other  
13 forms of useful energy and, except for ownership, meets the  
14 criteria to be a qualifying cogeneration facility as defined in  
15 the federal Public Utility Regulatory Policies Act of 1978, 16  
16 U.S.C. § 2601 et seq., and related federal regulations.

17 b. "New cogeneration facility" means any of the following:

18 (1) A cogeneration facility, regardless of capacity, which  
19 is first placed into service on or after January 1, 2009, that  
20 uses the same energy source for the sequential generation of  
21 electrical or mechanical power in combination with steam, heat,  
22 or other forms of useful energy and meets the criteria to be  
23 a qualifying cogeneration facility as defined in the federal  
24 Public Utility Regulatory Policies Act of 1978, 16 U.S.C § 2601  
25 et seq., and related federal regulations.

26 (2) A cogeneration facility in service prior to January 1,  
27 2009, that became subject to the replacement generation tax  
28 under section 437A.6 for the first time on or after January 1,  
29 2009.

30 Sec. 3. Section 437A.3, subsection 11, paragraph b,  
31 subparagraphs (1) and (2), Code Supplement 2009, are amended  
32 to read as follows:

33 (1) An electric power generating plant that is owned  
34 by or leased to an electric company, electric cooperative,  
35 ~~or~~ municipal utility, or any other taxpayer, and that initially

1 generates electricity subject to replacement generation tax  
2 under section 437A.6 on or after January 1, 2003.

3 (2) An electric power generating plant that is owned  
4 by or leased to an electric company, electric cooperative,  
5 ~~or~~ municipal utility, or any other taxpayer, that initially  
6 generated electricity subject to replacement generation tax  
7 under section 437A.6 before January 1, 2003, and that is sold,  
8 leased, or transferred, in full or in part, on or after January  
9 1, 2003. If any portion of an electric power generating plant  
10 is sold, the entire plant shall be treated as if it were a new  
11 electric power generating plant.

12 Sec. 4. Section 437A.5, subsection 1, paragraph c,  
13 unnumbered paragraph 3, Code 2009, is amended to read as  
14 follows:

15 If the new electric power generating plant is part of a  
16 cogeneration facility or new cogeneration facility, the natural  
17 gas delivery rate for that plant shall be the lesser of the  
18 natural gas delivery rate established in this paragraph "c" or  
19 the rate per therm of natural gas as in effect at the time of  
20 the initial natural gas deliveries to the plant for the natural  
21 gas competitive service area where the new electric power  
22 generating plant is located.

23 Sec. 5. Section 437A.8, subsection 4, paragraph d, Code  
24 2009, is amended by adding the following new unnumbered  
25 paragraph:

26 NEW UNNUMBERED PARAGRAPH. If a taxpayer has paid an amount  
27 of replacement tax, penalty, or interest which was deposited  
28 into the property tax relief fund and which was not due, all  
29 of the provisions of section 437A.14, subsection 1, paragraph  
30 "b", shall apply with regard to any claim for refund or credit  
31 filed by the taxpayer. The director shall have sole discretion  
32 as to whether the erroneous payment will be refunded to the  
33 taxpayer or credited against any replacement tax due, or to  
34 become due, from the taxpayer that would be subject to deposit  
35 in the property tax relief fund.

1     Sec. 6. Section 437A.15, subsection 7, paragraph b, Code  
2 Supplement 2009, is amended to read as follows:

3     *b.* The task force shall study the effects of the replacement  
4 tax on local taxing authorities, local taxing districts,  
5 consumers, and taxpayers through January 1, ~~2010~~ 2013. If the  
6 task force recommends modifications to the replacement tax that  
7 will further the purposes of tax neutrality for local taxing  
8 authorities, local taxing districts, taxpayers, and consumers,  
9 consistent with the stated purposes of this chapter, the  
10 department of management shall transmit those recommendations  
11 to the general assembly.

12     Sec. 7. NEW SECTION. **437A.16A New cogeneration facilities.**

13     1. *a.* Except as otherwise provided by this chapter, the  
14 property of a new cogeneration facility subject to replacement  
15 tax that is primarily and directly used in the production,  
16 generation, transmission, or delivery of electricity shall be  
17 exempt from taxation by means of applying a credit, as computed  
18 in this section, representing the value of this exempt property  
19 against the assessed value of the entire new cogeneration  
20 facility as determined by the local assessor under the  
21 provisions of chapters 427, 427A, 427B, 428, 441, and any other  
22 applicable abatement and exemption provisions under this Code.

23     *b.* Following the March 31 due date for the replacement  
24 tax return as required by section 437A.8, the director shall  
25 annually determine the assessed value of the new cogeneration  
26 facility exempt property by dividing the prior year's  
27 replacement tax liability attributable to that facility by  
28 the current fiscal year's consolidated taxing district rate  
29 for the taxing district where the facility is located, then  
30 multiplying the quotient by one thousand. The director shall  
31 certify this value to the local assessor on or before April 10  
32 of the current calendar year. The assessor shall apply this  
33 certified value as a credit against the total assessed value of  
34 the facility. The allowable credit shall not exceed the total  
35 value of the new cogeneration facility as determined by the

1 local assessor for the assessment year and any excess credits  
2 shall not be applied to any other assessment year.

3     *c.* A credit shall not be applied to a new cogeneration  
4 facility for the first year the facility becomes subject to the  
5 replacement tax if it first became subject to the replacement  
6 tax after January 1 of that year. For the first year in which  
7 the new cogeneration facility is subject to the replacement  
8 tax as of January 1 of that year, the taxpayer shall estimate  
9 the total replacement taxes due for that year and report that  
10 estimate to the director by March 31, and the director shall  
11 base the determination of assessed value from that estimate.  
12 If the estimate varies by more than five percent from the  
13 actual replacement tax liability for the year in which the  
14 facility was first subject to the replacement tax as of January  
15 1, the director shall adjust the next year's assessed value  
16 calculation by increasing or decreasing the current replacement  
17 tax calculation to reflect the difference between the estimate  
18 and the actual replacement tax owed for the year in which the  
19 facility was first subject to replacement tax as of January 1.

20     2. The director shall classify each new cogeneration  
21 facility as a separate taxpayer for reporting purposes and  
22 shall allocate the entire replacement tax attributable to the  
23 new cogeneration facility to the local taxing district or  
24 districts where that facility is located. The assessed value  
25 of the exempt property of the new cogeneration facility shall  
26 be the basis for determining the statewide property tax imposed  
27 by section 437A.18.

28     3. Any cogeneration facility placed in service prior to  
29 January 1, 2009, that did not qualify as a self-generator under  
30 subsection 437A.3, subsection 27, as of January 1, 2009, shall  
31 be subject exclusively to the replacement tax.

32     Sec. 8. Section 437A.18, Code 2009, is amended to read as  
33 follows:

34     **437A.18 Tax imposition.**

35     An annual statewide property tax of three cents per one

1 thousand dollars of assessed value is imposed upon all property  
2 described in ~~section~~ sections 437A.16 and 437A.16A on the  
3 assessment date of January 1.

4 Sec. 9. Section 437A.19, subsection 1, paragraph a, Code  
5 Supplement 2009, is amended by adding the following new  
6 subparagraph:

7 NEW SUBPARAGRAPH. (8) Any gas or transmission property  
8 at acquisition cost of more than one million dollars that was  
9 transferred or disposed of in the preceding calendar year by  
10 local taxing district.

11 Sec. 10. Section 437A.19, subsection 2, paragraph e, Code  
12 Supplement 2009, is amended to read as follows:

13 e. In addition to reporting the assessed values as described  
14 in this subsection, the director, on or before October 31 of  
15 each assessment year, shall also report to the department  
16 of management and to the auditor of each county the taxable  
17 value of taxpayer property as of January 1 of such assessment  
18 year for each local taxing district. For purposes of this  
19 chapter, "*taxable value*" means the value for all property  
20 subject to the replacement tax annually determined by the  
21 director, by dividing the estimated annual replacement tax  
22 liability for that property by the ~~prior~~ current fiscal year's  
23 consolidated taxing district rate for the taxing district  
24 where that property is located, then multiplying the quotient  
25 by one thousand. A taxpayer who paid more than five hundred  
26 thousand dollars in replacement tax in the previous tax year  
27 or who believes ~~their~~ the taxpayer's replacement tax liability  
28 will vary more than ten percent from the previous tax year  
29 shall report to the director by October 1 of the current  
30 calendar year, on forms prescribed by the director, the  
31 estimated replacement tax liability that will be attributable  
32 to all of the taxpayer's property subject to replacement  
33 tax for the current tax year. The department shall utilize  
34 the estimated replacement tax liability as reported by the  
35 taxpayer or the taxpayer's prior year's replacement tax

1 amounts to estimate the current tax year's taxable value for  
 2 that property. Furthermore, a taxpayer who has a new major  
 3 addition of operating property which is put into service for  
 4 the first time in the current calendar year shall report to  
 5 the director by October 1 of the current calendar year, or at  
 6 the time the major addition is put into service, whichever  
 7 time is later, on forms prescribed by the director, the cost  
 8 of the major addition and, if not previously reported, shall  
 9 report the estimated replacement taxes which that asset will  
 10 generate in the current calendar year. For the purposes of  
 11 computing the taxable value of property in a taxing district,  
 12 the taxing district's share of the estimated replacement tax  
 13 liability shall be the taxing district's percentage share of  
 14 the "assessed value allocated by property tax equivalent"  
 15 multiplied by the total estimated replacement tax. "Assessed  
 16 value allocated by property tax equivalent" shall be determined  
 17 by dividing the taxpayer's current year assessed valuation in a  
 18 taxing district by one thousand, and then multiplying by the  
 19 prior year's consolidated tax rate.

20     Sec. 11. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.  
 21 This Act, being deemed of immediate importance, takes effect  
 22 upon enactment and applies retroactively to January 1, 2010,  
 23 for tax years beginning on or after that date.

24                                   EXPLANATION

25     This bill modifies provisions relating to the imposition of  
 26 a replacement tax on electricity and natural gas providers.

27     Code chapter 437A imposes a replacement tax on electric  
 28 companies, natural gas companies, electric cooperatives, and  
 29 municipal utilities in lieu of property taxes which would  
 30 otherwise be payable, which operates to remove tax costs  
 31 as a factor in a competitive environment by imposing like  
 32 generation, transmission, and delivery taxes on similarly  
 33 situated competitors who generate, transmit, or deliver  
 34 electricity or natural gas in the same competitive service  
 35 area.

1 The Code chapter currently defines a cogeneration facility  
2 to mean a facility with a capacity of 200 megawatts or less  
3 that uses the same energy source for the sequential generation  
4 of electrical or mechanical power in combination with  
5 steam, heat, or other forms of useful energy and, except for  
6 ownership, meets specified federal criteria. The bill adds a  
7 definition of new cogeneration facility which conforms to this  
8 existing definition, but without limitation as to generation  
9 capacity, and is applicable to a facility which is first placed  
10 into service on or after January 1, 2009, or to a facility in  
11 service prior to January 1, 2009, which first became subject to  
12 the replacement generation tax on or after January 1, 2009.

13 The bill provides a means for allocating the assessed value  
14 of a new cogeneration facility between property of the facility  
15 that is subject to local assessment and the property of the  
16 facility that is subject to the replacement tax, and to exempt  
17 from property tax the value of the property subject to the  
18 replacement tax by applying a credit representing the value of  
19 such exempt property against the total value of the facility.  
20 The bill modifies provisions relating to determination of the  
21 natural gas delivery rate applicable to new electric power  
22 generating plants to include a new cogeneration facility, and  
23 amends Code section 437A.18 to apply the statewide property tax  
24 to property of a new cogeneration facility.

25 Additionally, the bill adds to the definition of an electric  
26 power generating plant that such a plant may be owned by or  
27 leased to "any other taxpayer", in addition to an electric  
28 company, electric cooperative, or municipal utility. The  
29 bill provides a mechanism for refunding or crediting excess  
30 replacement taxes, penalties, and interest paid into the  
31 property tax relief fund established in Code section 426B.1  
32 by a new electric power generating plant, applying existing  
33 provisions regarding claims for refunds and credits contained  
34 in Code section 437A.14 and stating that the director of  
35 revenue shall have sole discretion regarding whether a refund



1 will be paid versus a credit granted.

2     The bill extends the time period during which the utility  
3 replacement tax task force is in existence for an additional  
4 three years, with the committee continuing to study the effects  
5 of the replacement tax on local taxing authorities, local  
6 taxing districts, consumers, and taxpayers through January 1,  
7 2013. The bill requires taxpayers to report to the director  
8 any gas or transmission property that had been acquired at a  
9 cost of more than \$1 million and disposed of in the preceding  
10 calendar year. The bill also provides, with reference to  
11 determining and reporting the taxable value of property subject  
12 to the replacement tax, that calculations will utilize the  
13 current fiscal year's consolidated taxing district rate for the  
14 taxing district where the property is located, rather than the  
15 prior fiscal year's rate under current law.

16     The bill takes effect upon enactment and applies  
17 retroactively to tax years beginning on or after January 1,  
18 2010.